C/100 (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION No. 282 OF 2002

PETITIONER: Budhwar Singh, age abut 30 years son of Kartik Ram, ex.Panchayat Secretary, Gram: Devlapath, Tah: Kartala, dist: Korba (C.G).

Vs.

RESPONDENTS:
1. State of Chhattisgarh: Through: Secretary, Panchayat & Welfare Department, D.K. Bhawan, Raipur (C.G)
2. Sarpanch, Gram Panchayat, Devlapath, Tah: Kartala, dist: Korba (C.G).
3. Chief Executive Officer, Janpat Panchayat, Kartala, dist. Korba (C.G).

P.R. No. 2240/02
Presented by Shri S.K. Shukla
dated 17.4.02

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 282 of 2003

Petitioner : Budhwar Singh.

Versus

Respondents : State of Chhattisgarh and Others.

Post for order on 18th July, 2006

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR
Writ Petition No. 282 of 2003

Petitioner Budhwar Singh.

Versus

Respondents State of Chhattisgarh and others.

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Shailesh Ahuja, counsel for the petitioner.

Shri Vinay Harit, Deputy Advocate General with Smt. Anju Ahuja, Deputy Government Advocate for the respondents No.1 and 3.

Shri Sunil Sahu, counsel for the respondent No.2.

ORDER

(/8 th July, 2006)

1. The present petition filed under the Article 226/227 of the Constitution of India impugns the order dated 26.8.2002 (Annexure P-5) passed by the Collector, Korba, holding that the resolution dated 3.4.2002 passed by the Gram Panchayat to remove the petitioner from the post of Secretary, Gram Panchayat was legal and valid. The order dated 21.4.2000 of Shri Tiharuram, Sarpanch, Gram Panchayat, Devlapath, Janpad Panchayat Kartala, District Korba, removing the petitioner from the post of Secretary Gram Panchayat, Devlapath, is also impugned.

2. The facts in nutshell are that the petitioner was appointed as Panchayat Karmi, vide order dated 10.4.1999. Thereafter, the petitioner was appointed as Secretary under Section 69 (1) of the Panchayat Raj Adhiniyam, 1993. Second proviso to Section 69 (1) of the Adhiniyam provides for bar on appointment of relative of any officer bearer of the concerned Gram Panchayat on the post of Secretary of Gram Panchayat. Admittedly, the petitioner was the younger brother of then, Sarpanch, Ramsai. Having come to know

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that appointment of the petitioner on the post of Secretary was illegal. The Gram Sabha of Gram Panchayat, in its resolution dated 17.4.2000 (Annexure R-1) resolved to remove the petitioner from the post of Secretary on the ground that the appointment of the petitioner as Secretary was illegal and void ab-initio.

3. The petitioner, being aggrieved, filed an Appeal before the Sub Divisional Officer, Korba, in Appeal No. 25-A-89 A (15)/99-2000. The Sub Divisional Officer by order dated 8.1.2001 dismissed the Appeal on the ground that the Court of Sub Divisional Officer has no jurisdiction to entertain the Appeal under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam.

4. Thereafter, the Appeal against the said order was preferred to the Collector. The Collector by order dated 26.8.2002 came to the conclusion, that the petitioner was the brother of the then Sarpanch Ramsai and under Section 69 (1) of the Panchayat Raj Adhiniyam any person who happens to be near relation of Sarpanch cannot be appointed on the post of Panchayat Secretary.

5. Learned counsel appearing for the respondents No.1 and 3, submits that the petitioner can continue as Panchayat Karmi, notwithstanding the fact that he happens to be brother of the then Sarpanch but cannot continue as Secretary, Panchayat under the Provisions of Section 69 (1) of the Panchayat Raj Adhiniyam. He further submits that the Appellate Authority is not the Collector but the Sub Divisional Officer under Rule 3 of the Panchayats (Appeal and Revision) Rules 1995, Table A.

6. Learned counsel appearing for the Gram Panchayat submits that the appointment of the petitioner as Panchayat Secretary was bad and

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illegal as he was the brother of the then Sarpanch, contrary to the provisions of Rule 69 (1) of the Adhiniyam.

7. Having heard learned counsel for the parties and perusing the records and provisions of law, it is evident under Section 69 (1) of Chhattisgarh Panchayat Raj Adhiniyam 1993, second proviso to Section 69 (1) of the Adhiniyam, provides that the person who happens to be relative of any office bearer of the Gram Panchayat shall not hold charge of Secretary of Gram Panchayat Section 69 reads as under:-

> " 69. Appointment of Secretary and Chief Executive Officer- (1) The State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats:
>
> Provided that the person holding the charge of a Secretary of Gram Panchayat immediately before the commencement of this Act shall continue to function as such till a Secretary is appointed in accordance with this section.
>
> Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat.
>
> Explanation-for the purpose of this sub-section the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law."

8. The services of the petitioner has been removed from the post of Panchayat Karmi and there is no bar on the basis of relationship to continue as Panchayat Karmi. It is admitted fact that the petitioner is still continuing as Panchayat Karmi, in Gram Panchayat, Devlapath.

9. For the reasons stated above, it is clear that the petitioner being younger brother of then Sarpanch Ramsai, was appointed illegally,

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contrary to the provisions of Rule 69 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. Hence, the order dated 21.4.2000 passed by the Gram Panchayat, Devlapath, Janpad Panchayat Kartala, District Korba, confirmed by order dated 26.8.2002, passed by the Collector, Korba, is legal and valid.

10. Accordingly, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge